

Senate Bill No. 743

Passed the Senate September 7, 2005

Secretary of the Senate

Passed the Assembly September 1, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 42301 and 42310 of, and to add Sections 42310.3 and 42321.5 to, the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

SB 743, Chesbro. Solid waste rigid plastic packaging containers: recycling rates: households.

(1) Existing law, the California Integrated Waste Management Act of 1989, administered by the California Integrated Waste Management Board, requires every rigid plastic packaging container, as defined, sold or offered for sale in this state, to generally meet one of specified criteria, including having a specified recycling rate of 45%, if it is a product-associated rigid plastic packaging container, as demonstrated to the board by the product maker, manufacturer, or other entity. Existing law defines the term “recycling rate” for this purpose as including one of 2 specified rates. Existing law defines “manufacturer” to mean the producer or generator of a product that is sold or offered for sale in the state and is stored inside of a rigid plastic container. The term “curbside collection program” is also defined for purposes of those provisions and the board is required to grant a waiver from those requirements if it finds that less than 60% of single-family homes in the state have curbside collection programs that include beverage container recycling.

This bill would make a conforming change in the definition of the term “curbside collection program” for purposes of these provisions.

This bill would revise the definition of “recycling rate” to additionally include the proportion of a single resin type, as specified, of a rigid plastic packaging container that is recycled in a single calendar year, notwithstanding the exemption of certain of those containers from the requirement to meet specified criteria.

This bill would modify the criteria for rigid plastic packaging containers to also include a recycling rate of 45% for a single resin type of rigid plastic packaging container, as demonstrated to the board by the product maker, manufacturer, or other entity.

(2) Existing law requires the board to implement procedures for certifying compliance with the plastic packaging container requirements and requires the board, if an entity provides a false or misleading certificate, to refer the provider to the Attorney General for prosecution of fraud.

This bill would provide that a manufacturer is in compliance with those criteria if the manufacturer makes a specified demonstration with regard to the use of postconsumer material by that manufacturer.

The bill would prohibit a container manufacturer, as defined, that sells a rigid plastic packaging container to a manufacturer and who submits a certification to the manufacturer, from providing any false or misleading information. The bill would provide that a container manufacturer, who submits to a manufacturer a certification with false or misleading information, is subject to the same penalties and fines that are imposed upon a manufacturer, thereby imposing a state-mandated local program by creating new crimes.

The bill would provide that a manufacturer is not subject to those penalties and fines as a result of the submittal of false or misleading information by a container manufacturer to the manufacturer with regard to a container sold to that manufacturer.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 42301 of the Public Resources Code is amended to read:

42301. For purposes of this chapter, the following definitions apply:

(a) “Container manufacturer” means a company or a successor company that sells any rigid plastic packaging container subject to this chapter to a manufacturer that sells or offers for sale in this state any product packaged in that container.

(b) “Curbside collection program” means a recycling program that collects materials set out by households for collection at the curb at intervals not less than every two weeks. “Curbside collection program” does not include redemption centers, buyback locations, drop-off programs, material recovery facilities, or plastic recovery facilities.

(c) “Refillable package” means a rigid plastic packaging container that the board determines is routinely returned to and refilled by the product manufacturer at least five times with the original product contained by the package.

(d) “Reusable package” means a rigid plastic packaging container that the board determines is routinely reused by consumers at least five times to store the original product contained by the package.

(e) “Manufacturer” means the producer or generator of a product that is sold or offered for sale in the state and that is stored inside of a rigid plastic packaging container.

(f) “Rigid plastic packaging container” means any plastic package having a relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, that is capable of maintaining its shape while holding other products, including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in the state.

(g) “Postconsumer material” means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product lifecycle. Postconsumer material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

(h) “Recycled” means a product or material that has been reused in the production of another product and has been diverted from disposal in a landfill.

(i) “Recycling rate” means the proportion, as measured by weight, volume, or number, of a rigid plastic packaging container sold or offered for sale in the state that is being recycled in a given calendar year, that is one of the following:

(1) A particular type of rigid plastic packaging container, such as a milk jug, soft drink container, or detergent bottle.

(2) A product-associated rigid plastic packaging container.

(3) A single resin type, as specified in Section 18015, of rigid plastic packaging container, notwithstanding the exemption of that container from this chapter pursuant to subdivision (b), (c), or (d) of Section 42340.

(j) (1) “Source reduced container” means either of the following:

(A) A rigid plastic packaging container for which the manufacturer seeks compliance as of January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with the packaging used for that product by the manufacturer from January 1, 1990, to December 31, 1994.

(B) A rigid plastic container for which the manufacturer seeks compliance after January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with one of the following:

(i) The packaging used for the product by the manufacturer on January 1, 1995.

(ii) The packaging used for that product by the manufacturer over the course of the first full year of commerce in this state.

(iii) The packaging used in commerce that same year for similar products whose containers have not been considered source reduced.

(2) A rigid plastic packaging container is not a source reduced container for the purposes of this chapter if the packaging reduction was achieved by any of the following:

(A) Substituting a different material type for a material that previously constituted the principal material of the container.

(B) Increasing a container’s weight per unit or use of product after January 1, 1991.

(C) Packaging changes that adversely affect the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material.

(k) “Product-associated rigid plastic packaging container” means a brand-specific, rigid plastic packaging line that may have one or more sizes, shapes, or designs and that is used in conjunction with a particular generic product line.

(l) “PETE” means polyethylene terephthalate as specified in subdivision (a) of Section 18015.

(m) “HDPE” means high-density polyethylene.

SEC. 2. Section 42310 of the Public Resources Code is amended to read:

42310. Except as otherwise provided in this chapter, every rigid plastic packaging container sold or offered for sale in this state shall, on average, meet one of the following criteria:

- (a) Be made from 25 percent postconsumer material.
- (b) Have a recycling rate of 45 percent if it is a product-associated rigid plastic packaging container or a single resin type of rigid plastic packaging container, as demonstrated to the board by the product maker, container manufacturer, or other entity. The board may take appropriate action to verify the demonstration, but the board is not required to expend state funds to conduct a survey or calculate the rate.
- (c) Be a reusable package or a refillable package.
- (d) Be a source reduced container.
- (e) Is a container containing floral preservative that is subsequently reused by the floral industry for at least two years.

SEC. 3. Section 42310.3 is added to the Public Resources Code, to read:

42310.3. (a) Notwithstanding Section 42310, a manufacturer is in compliance with the requirements of this chapter if the manufacturer demonstrates through its own actions, or the actions of another company under the same corporate ownership, that one of the following actions were taken during the same period for which the manufacturer is subject to this chapter, with regard to a rigid plastic packaging container that stores the manufacturer's product that is sold or intended for sale in this state:

(1) The manufacturer, or another company under the same corporate ownership, consumed a volume of postconsumer material generated in the state in the manufacture of a rigid plastic packaging container subject to Section 42310, or a rigid plastic packaging container that is not subject to that section, that resulted in the consumption of an equivalent amount of postconsumer material that the rigid plastic packaging container is otherwise required to contain, as specified in subdivision (a) of Section 42310.

(2) The manufacturer, or any company under the same corporate ownership, arranged by contractual agreement for the purchase and consumption of postconsumer material generated in

the state and exported to another state or country for the manufacture of rigid plastic packaging containers that is equivalent to, or exceeds the volume of, the postconsumer material that the rigid plastic packaging container is otherwise required to contain, as specified in subdivision (a) of Section 42310.

(b) The board shall determine the manner of demonstrating compliance with the requirements of this section.

SEC. 4. Section 42321.5 is added to the Public Resources Code, to read:

42321.5. (a) A container manufacturer who sells a rigid plastic packaging container to a manufacturer and who submits a certification to the manufacturer, for purposes of this chapter, shall not provide any false or misleading information. A container manufacturer who submits to a manufacturer a certification with false or misleading information is subject to the same penalties and fines that are imposed upon a manufacturer that does not comply with Sections 42321 and 42322.

(b) Notwithstanding Sections 42321 and 42322, a manufacturer is not subject to any fine or penalty for not complying with this chapter as a result of the submittal of false or misleading information by a container manufacturer to the manufacturer with regard to a container sold to that manufacturer.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2005

Governor